IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.789 OF 2006
CONNECTED WITH
COMPANY APPLICATION NO.1045 OF 2006

In the matter of Section 100 and 391 to 394 of the Companies Act, 1956

And

In the matter of Hinduja TMT Limited, a company incorporated under the Companies Act, 1956 and having its registered office at InCentre, 49/50 MIDC, Andheri East, Mumbai–400 093

Hinduja TMT Limited ..Petitioner Company

Dr.Virendra Tulzapurkar with Virag Tulzapurkar and Mr.Tapan Deshpande i/b.M/s.Amarchand & Mangaldas and Suresh A. Shroff and Co. for the petitioner
Mr.Pravin Samdani i/b. M/s.Wadia Ghandy & Co for Nishkalp – unsecured creditors in Company Petition No.789 of 2006
Ms.Madhuri Gaikwad i/b. Pankaj Kapoor – Regional Director

CORAM : S.A.BOBDE, J.

DATE : 23RD FEBRUARY, 2007

P.C.

1. Company Petition No.789 of 2006 and Company

Petition No.790 of 2006 are filed by transferee company i.e.HINDUJA TMT LIMITED in which Nishkalp Investments and Trading Company Limited have preferred an objection. The Company Petition No.790 of 2006 is filed by the transferee company i.e.HTMT Technologies Limited.

2. By these two petitions, the companies have sought an approval of the scheme for demerger of the business undertaking of the petitioner company with the transferee company and for consequential orders pertaining to the scheme.

3. The scheme for arrangement and reconstruction is a scheme where the demerged undertaking of Hinduja TMT Limited is to demerge into HTMT Technologies Limited (Hereinafter referred to as “the Resulting Company”).

4. Hinduja TMT Limited has its shares listed on the Bombay Stock Exchange Limited and the National Stock Exchange of India Limited. The main objects of the Hinduja TMT Limited are as under :-

"1. To carry on the business or merchants, traders and distributors, commission agents, brokers, adatias, buyers, sellers, importers, exporters, dealers in textile, cloth, silk, rayon, man made fabrics, synthetic, woolen, yam, threads, garments, made up hosiery.

2. To carry on the business of financing by way of loans and advances for subscribing the capital of industrial enterprises.

2a. To develop, implement, manufacture, convert, alter, modify, export, import, purchase, sell or lease and otherwise deal in hardware, software and allied equipment, including for Computer Aided Design/Computer Aided Manufacturing/Computer Integrated Manufacturing and Telecommunications and to install or hire computer and allied equipment and to run and conduct bureau of computer services and in particular to develop, design, programme, conduct feasibility studies and to act as advisors, consultants, retainers, trainers in all capacity and all matters and problems relating to management, marketing.

2b. To manufacture, develop, import, export, buy, sell, distribute, repair; convert, alter, modify, take or let on hire, lease and otherwise deal in all kinds of electronic articles, products and devices and their accessories, stores, spare parts, components, assemblies and all kinds of instruments, apparatus, appliances, software and gadgets, and used for or in connection with any of the aforesaid.

2c. To act as Internet Service providers to is subscribers subjec to approval of Department of Tecommunications (DOT)/ Telecommunications Regulatory Authority of India (TRAI)/ other authorities as may be approved by the Government from time to time and to construct install, operate, service, repair, exploit, convert, turn to account, rent out,

maintain or in any other manner exploit, or deal in audio, video and/or date signal broadcasting, transmission and/or reception systems/networks or part/s thereof which may include but shall not be limited to wired/wireless Cable T.V.Systems, satellite Telvision Channels. Entertainment Channels in all languages. Educational Channels, Microwave Multichannel Distribution Systems (MMDS), SMATV, Telephone, Personal Cellular Systems (PCS), Data Transmission/Receptions by utilizing, using, hiring, chartering, renting, or in any other manner exploiting Satellite Transporters Satellite Transmission/Reception, Processing of Video or any kind of signals for Audion and Visual Communicationfor information/education/entertainment purposes.

2d. To carry out and undertake all activities, business, etc. relating to E-Commerce and for that purpose to set out all facilities and infrastructure etc.”

5. The authorized share captial structure of the petitioner company is as follows :-

Authorised	**Rupees**
70,000,000 Equity Shares of Rs.10/- each	
Issued, Subscribed and Paid-up	
40,965,777 Equity Shares of Rs.10/- each fully paid-up	40,96,57,770
Total	40,96,57,770

6. The capital of the transferee company is as

follows :-

Authorised	**Rupess**
60,00,000 Equity shares of Rs.10 each	6,00,00,000
Total	6,00,00,000

Issued, Subscribed and Paid-up :

2,50,000 Equity Shares of Rs.10/- each fully paid up	25,00,000
Total	25,00,000

7. As on 31st August, 2006, the petitioner company held 100% of the equity share capital of the transferee company.

8. The reasons for the transfer the demerged undertaking of the petitioner company into the transferee company are as under :-

(a) The petitioner company's core business is Information Technology (IT) and Information Technology Enabled Services (ITES). At the same time, the petitioner company also has presence in Media (Film Content, Cable TV distribution network) and Broadband (high speed internet and related value added services) businesses through its subsidiaries

(b) In recent years, the petitioner company's IT/ITES business (mainly Business Process Outsourcing – BPO) has grown at an industry leading rate and the petitioner company has become one of the significant players in India. The petitioner company has made serveral overseas acquisitions of ITES-BPO companies as well as restructured its overseas and domestic operations. By enlarging its global delivery footprint and blending its core competencies residing in various units, the petitioner company has transformed itself into a global enterprise in the IT/ITES-BPO space.

(c) At the same time, the Media and Broadband businesses of the petitioner company, have also become well established and are well prepared to participate in the era of explosive growth that is expected on the back of regulatory moves in motion.

(d) In the context of the foregoing, the petitioner company's Board of Directors considered that separating the two businesses viz. IT/ITES-BPO and Media/Broadband is a sound value proposition. Going forward, it is considered that the IT/ITES-BPO business should be an independent pure play focused company for improving market visibility and industry and investor recognition. The sharper focus on IT/ITES-BPO would help attract further global customers and top class talent apart from aiding organic and inorganic growth initiatives.

(e) Simultaneously, the Media/broadband businesses would also benefit from the sharp focus that would be accorded to them. The demerger would enable the media/broadband businesses to more effectively deal with the changing business and regulatory environment, whereby convergence within the sector is a challenge and an opportunity. Going forward, expansions through alliances, partnerships,

strategic investments and joint ventures including mergers and acquisitions will be a key growth strategy for these businesses, and the restructuring would facilitate these initiatives.

(f) The demerger will not only unlock value for the shareholders of the petitioner company in the short term, but both the companies will also achieve their individual business objectives faster and better than before, thereby creating further value for the shareholders in the long term.

(g) The demerger would consolidate the businesses of both the companies, so as to achieve global size and business synergy. Such an integrated and synergistic approach would also be essential to function in an increasingly competitive environment and benefit from growth opportunities.

(h) Subsequent to the demerger, the petitioner company would have a Media/Broadband business with promising prospects and a robust cash surplus balance sheet.

(i) For shareholders of the petitioner company, benefits accrue from the creation of a financially stronger, operationally efficient, globally competitive Media and Broadband business.

The Board of Directors has granted its approval to separate two businesses of the petitioner company i.e.IT/ITES-BPO, MEDIA/BROADBAND. Another important reason is that the MEDIA/BROADBAND business which would remain with HINDUJA TMT upon the transfer of the IT/ITES, MEDIA/BROADBAND business to the tranferee company would result in

HINDUJA TMT LIMITED having a surplus balance sheet. In brief, question of demerged proposed as follows. On 31st August, 2006 the Board of Directors of HINDUJA TMT approved the scheme of arrangement and reconstruction between HINDUJA TMT and HTMT TECHNOLOGIES LIMITED and their respective shareholders and creditors. On 13th October, 2006, the company HINDUJA TMT LIMITED by way of Company Application No.1045 of 2006 under Section 311 of the Company Act for directions to convene a meeting of the equity shareholders and dispension of meeting of the unsecured creditors of the petitioner company to seek their approval. The Court further directed to give individual notices of hearing to unsecured creditors.

9. Thereafter, HINDUJA TMT LIMITED issued notices for convening an Extraordinary General Meeting held on 4th December, 2006. The meeting was duly advertised and the equity shareholders who are duly served on 4th December, 2006. The scheme was approved and the Resolution was approved. 99 equity shareholders holding 2,71,34,470 votes. The

report of the chairman has been filed in the Court at Exhibit 8. On 4th December, 2006, a Special Resolution under Section 100 of the Companies Act, 1956 for reduction of share capital has been passed. The petition seeking a sanction to the scheme under Section 100 r/w.391 and 394 of the Companies Act, 1956 was filed on 12th December, 2006. A notice of sharing of the petition was duly published. The notices were directed to the Regional Director and the Registrar of the Companies Act, 1956. Upon compliance of the order dated 15th December, 2006, the matter came up before this Court on 2nd February, 2007 when NISHKALP INVESTMENTS AND TRADING COMPANY filed an objection which has been heard today.

10. Prima facie upon in view of the above, there is compliance of Sections 391 and 394 of the Companies Act, 1956.

11. At this juncture, it is necessary to consider the objection of the NISHKALP INVESTMENTS AND TRADING COMPANY hereinafter referred to as

'objector'). Mr.Pravin Samdani, the learned counsel for the objector submitted that the objector has several objections. The objector is unsecured creditor and the share capital has been reduced to the detriments of the unsecured creditor. The unsecured creditor has been called and there is, thus, a non-compliance of Section 391. However, all these objections are sought to be raised orally without there being any foundation in the affidavit which states out the objection and I do not propose to consider them. The only objection i.e.set out in the affidavit that the objector has an apprehension that by way of the scheme HINDUJA TMT LIMITED are trying to transfer its assets to the transferee company and would become incapable of making payments to the objector in case the suit filed by the objector is decreed. The objector has therefore, sought protection of its rights and execution. Significantly, there is no objection on the ground that the scheme is contrary to the law or public interest.

12. The basis of the objection is that the

objector has filed Summary Suit No.2550 of 2004 praying for recovery of sum of Rs.8,67,11,781 with interest @ 20% on the principal amount of Rs.3,70,00,000. This suit is admittedly for damages arising out of breach of contract by HINDUJA TMT LIMITED. The objector has claimed in the suit that HINDUJA TMT LIMITED are its creditors. HINDUJA FINANCIAL CORPORATION has breached the agreement on 25th November, 1997 with the objector whereby HINDUJA TMT LIMITED agreed to sell the shares of MODI INTERNATIONAL PAPERS LIMITED to the public. Thereupon HINDUJA TMT LIMITED also agreed to buy from the objector M.I.P. Shares before 31st December, 2003 on the spot delivery basis at a certain rate and failed to honour its commitment to do so. The objector has therefore, prayed for a decree in respect of the loss allegedly suffered by it on account of HINDUJA TMT LIMITED failing to live up its commitment under the agreement. In this suit the objector had taken out a summons for judgment which was dismissed by this Court while granting unconditional leave to HINDUJA TMT LIMITED to defend the suit. The

objector challenged this order before the Supreme Court. The Supreme Court has disposed of Special Leave Petition No.3236 of 2006 with a direction that the suit should be disposed of expeditiously. Now on the basis of claim which is yet not determined the objector submitted that there are unsecured creditors who are entitled for their rights protected in these proceedings for approval of the scheme of demerger under Sections 391 and 394 of the Companies Act, 1956.

13. Dr.Tulzapurkar, the learned counsel for the HINDUJA TMT LIMITED submitted that the objectors are not creditors in the sense that there is no debt. According to the learned counsel, the sum claimed by the objector in the suit is unascertained sum of money which cannot be described to be debt. Consequently, the objectors described themselves as creditors and they have therefore, no locus to be heard with the matter.

14. It is not necessary to determine the precise status of the objector i.e.whether they are

creditors or not in the circumstances of this case. Assuming that the objectors have a valid claim of about 8.67 crores, it is clear from the features from this demerger that the claim would not be prejudicially affected in any way. HINDUJA TMT LIMITED of the Company Petition No.789 of 2006 has stated vide an affidavit of 5th February, 2007 that after demerger its financial position would be substantially strong. Accordingly, HINDUJA TMT LIMITED has on the demerger appointed date will have a net worth of Rs.57,657.29 lacs and cash in Bank balance of 20,602.10 lacs. Mr.Pravin Samdani, the learned counsel for the objector points out that in the provisional balance sheet of the post demerger scenario at Exhibit K-1 to the petition, HINDUJA TMT LIMITED has pointed out that it would have a cash and Bank balance of Rs.710.81 lacs. However, it seems that the provisional balance sheet is as of 1st October, 2006 and it shows that the net current assets of HINDUJA TMT LIMITED to be Rs.3,621.58 lacs. In a manner such as this where the objector has a suit for Rs.8.67 crores, it is important to consider the networth as

stated above in the provisional balance sheet under the current assets are Rs.3,621.58 lacs and according to the last affidavit based on an Auditor's Certificate the networth is of Rs.57,657.29 lacs and cash and Bank balance is of Rs.20,602.10 lacs. It seems that there is no likelihood of any decree that may be passed in favour of the objector remaining unsatisfied. In this view of the matter , I see no merits in the objection. Having regard to the sell and features of the scheme and compliance of the scheme with the relevant provisions of the Companies Act, 1956, the scheme is liable to be approved. Accordingly, Company Petition No.789 of 2006 is allowed in terms of prayer clauses (a) to (m). The minutes relating to the report of the shares capital at Exhibit A to the affidavit dated 8th February, 2007 are approved in terms of prayer clause (a) to (m).

15. Upon registration of the order and minute by the Registrar, a notice of registration shall be published in The Economic Times and Maharashtra Times, Mumbai edition, within 14 days of

registration of such order and the minute with the Registrar of Companies.

16. Drawn up orders dispensed with. All concerned to act on a copy of this order.

17. Mr.Pravin Samdani applies for stay of this order. Having regard to the circumstances of the case, there is no merit in this application which is hereby rejected.

(S.A.BOBDE, J.)